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*Interim Co-Lead Counsel for Indirect Purchaser Plaintiffs*

(Additional Counsel on Signature Page)

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**OAKLAND DIVISION**

**IN RE LITHIUM ION BATTERIES  
 ANTITRUST LITIGATION**

**Case No. 4:13-md-02420-YGR**

**MDL No. 2420**

\_\_\_\_\_  
 This Document Relates to:

**INDIRECT PURCHASER PLAINTIFFS'  
 MEMORANDUM IN SUPPORT OF  
 APPOINTMENT OF PLAINTIFFS'  
 STEERING COMMITTEE**

**INDIRECT PURCHASER PLAINTIFFS**

**Honorable Yvonne Gonzalez Rogers**

**INDIRECT PURCHASER PLAINTIFFS' MEMORANDUM IN SUPPORT OF  
 APPOINTMENT OF PLAINTIFFS' STEERING COMMITTEE;  
 Case No. 4:13-md-02420-YGR**  
 1095171.2

1           **I. INTRODUCTION**

2           On April 3, 2013, the Court appointed COTCHETT, PITRE & McCARTHY LLP,  
3 HAGENS BERMAN SOBOL SHAPIRO LLP, and LIEFF, CABRASER, HEIMANN &  
4 BERNSTEIN, LLP as Indirect Purchaser Plaintiffs' Interim Co-Lead Counsel in this action.  
5 (Minute Order, Dkt. No. 145). The Court also ordered IPPs to submit a memorandum proposing  
6 recommendations for Steering Committee appointees, setting forth the qualifications of the  
7 proposed members.

8           Interim Co-Lead Counsel for the Indirect Purchaser Plaintiffs believe that the proposal set  
9 forth below serves the interest of "achieving efficiency and economy," Moore's Federal Practice:  
10 Manual for Complex Litigation (Fourth) § 10.2221 (2004), by appointing law firms that  
11 collectively have antitrust and complex litigation, discovery, and trial experience, financial and  
12 personnel resources, and breadth of clients. The appointment of the proposed firms to a  
13 Plaintiffs' Steering Committee, for the reasons stated herein, would benefit the Court and the  
14 Class by appointing firms experienced in indirect purchaser antitrust litigation to leadership  
15 positions so that work may be accomplished efficiently.

16           **II. PROCEDURAL AND FACTUAL BACKGROUND**

17           This class action involves an alleged conspiracy beginning on or about January 1, 2002 to  
18 fix the price of Lithium Ion Batteries. These batteries are used to supply power to various  
19 electronic devices, such as digital cameras, laptop notebooks, camcorders, cell phones, music  
20 players, and personal game consoles, among others. This action is similar in some ways, and  
21 involves many of the same defendants, as *In Re Dynamic Random Access Memory (DRAM)*  
22 *Antitrust Litigation*, MDL No. 02-1486 (N.D. Cal.) (Hamilton, J.) ("DRAM"), *In Re Cathode Ray*  
23 *Tube (CRT) Antitrust Litigation*, MDL No. 05-5944 (N.D. Cal.) (Conti, J.) ("CRT"), *In Re: TFT-*  
24 *LCD (Flat Panel) Antitrust Litigation*, MDL No. 07-1827 (N.D. Cal.) (Illston, J.) ("LCD"), *In Re*  
25 *Static Random Access Memory (SRAM) Antitrust Litigation*, MDL No. 07-1819 (N.D. Cal.)  
26 (Wilken, J.) ("SRAM"), *In Re Flash Memory Antitrust Litigation*, MDL No. 07-0086 (N.D. Cal.)  
27 (Armstrong, J.) ("Flash"), and *In Re Optical Disk Drive (ODD) Products Antitrust Litigation*,

MDL No. 10-2143 (N.D. Cal.) (Seeborg, J.) (“ODD”). The United States Department of Justice and the European Union’s competition authorities have been investigating the alleged conspiracy to fix the price of Lithium Ion Batteries.

### III. DISCUSSION

Due to the size and complexity of this multidistrict antitrust action, Plaintiffs’ counsel believe that the proposed Plaintiffs’ Steering Committee will provide substantial benefits to the Class. Interim Lead Counsel’s experience in recent MDL class actions, including those identified above, are illustrative of the demands that Indirect Purchaser Plaintiffs will face. In almost all of these cases, document productions involved millions of pages of paper and electronic data in English and foreign languages, witnesses and documents located around the world, extensive deposition practice, hotly-contested motions including motions to dismiss, motions to stay, jurisdictional motions, class certification motions, and summary judgment motions. These demands are best addressed through an organization of counsel with experience and expertise in cases of this nature.

For instance, in the SRAM Litigation, nine sets of foreign and domestic corporate defendants produced more than 11 million pages of documents, all of which had to be reviewed and indexed in preparation for class certification, summary judgment, and trial. Many of the documents produced were in a foreign language and required translation and review. Plaintiffs’ counsel also had to work with numerous experts and consultants in order to understand the technical intricacies of the SRAM market and industry. In the LCD and CRT cases, over a hundred depositions were taken. Many of these depositions took place in Asia and required translators.

This action is similar in complexity, and will involve equally voluminous discovery, scores of depositions of defendants, class representatives, and third parties, and extensive technical work with experts. The inclusion of this group of qualified and experienced law firms and attorneys on the PSC will greatly benefit the prosecution of this action in an efficient,

1 effective, and timely manner, by drawing on their experience in representing plaintiff antitrust  
2 classes from discovery through trial.

3 The Court identified three “main criteria for membership in the PSC: a) willingness and  
4 availability to commit to a time-consuming project; b) ability to work cooperatively with others;  
5 and c) professional experience in this type of litigation.” (March 4, 2013 Order Setting Initial  
6 Conference, Dkt. No. 8). Interim Co-Lead Counsel have conferred extensively regarding the  
7 applicants for the Steering Committee, and have agreed that the following firms meet the Court’s  
8 criteria, and have the qualifications necessary to make a valuable contribution to this litigation.

9 **A. Cohen Milstein Sellers & Toll PLLC**

10 Cohen Milstein – a firm with more than sixty lawyers, including twenty that focus  
11 primarily on antitrust class action litigation – brings two attributes to the Plaintiffs’ Steering  
12 Committee that are particularly germane. First, in addition to its established plaintiffs’  
13 credentials, the Cohen Milstein lawyers have significant experience representing defendants in  
14 class actions and other matters. **Kit Pierson** represented large defendants for more than two  
15 decades, most recently for eleven years as a Shareholder at Heller Ehrman and before that as a  
16 Partner at Jenner & Block, including Fortune 500 companies in direct and indirect purchaser class  
17 action litigation. Similarly, **Brent Johnson** has substantial experience from his tenure at Latham  
18 & Watkins representing large corporate defendants in complex antitrust litigation and class  
19 actions. This experience will provide important insights on defense litigation strategies as well as  
20 areas where the plaintiffs and defendants may find common ground on discovery and other areas  
21 to move the litigation forward efficiently.

22 Second, the Cohen Milstein team has significant antitrust trial experience. For example,  
23 Cohen Milstein is co-lead counsel for the plaintiff class in the *In re Urethane Antitrust Litigation*,  
24 Case No. 2:04-md-01616 (D. Kan.), where, after securing settlements with some defendants for  
25 \$139 million, a trial this January resulted in a jury verdict for the class of \$400 million (before  
26 trebling). In addition to serving as a key member of that trial team, Mr. Pierson was also one of  
27 the trial lawyers for Microsoft Corporation in two lengthy jury trials defending antitrust claims

brought by indirect purchaser classes. Mr. Johnson has also defended one of the country's largest food processors in a four week antitrust trial in federal court. Accordingly, the Cohen Milstein team has significant antitrust trial experience that will benefit the proposed class. Cohen Milstein's firm resume is attached. (Williams Decl., Ex. 1.)

#### **B. Cuneo Gilbert & LaDuca, LLP**

Cuneo Gilbert & LaDuca, LLP has 18 attorneys in six offices and devotes the majority of its practice to the representation of clients involved in antitrust, securities, corporate governance, consumer protection, and product liability complex and class action litigation. The firm's antitrust attorneys have extensive experience and knowledge of the law, theory, and economics of the antitrust statutes, and the firm has had great success helping both consumers and businesses injured by antitrust practices. The firm's attorneys are very experienced in international antitrust issues. Cuneo Gilbert & LaDuca, LLP's firm profile is attached. (Williams Decl., Ex. 2).

**Sandra W. Cuneo** is admitted to the State Bar of California and the District of Columbia Bar. She has significant antitrust and trade regulation experience, both as plaintiffs' and defendants' counsel, as well as with the Federal Trade Commission. She has extensive complex litigation and discovery experience over the past 25 years, including supervision of up to 165 attorneys in time-sensitive matters representing companies in merger investigations by the Federal Trade Commission and U.S. Department of Justice. In addition, she is familiar with some of the most widely used ESI platforms, has negotiated contracts with ESI providers, and negotiated key word and database search parameters with the Department of Justice. She has taken and defended scores of depositions, many in complex trade regulation and antitrust matters, and worked extensively with both testifying and non-testifying economic experts, assisted in the preparation of their reports, and taken and defended expert depositions in antitrust cases. Ms. Cuneo's resume is attached. (Williams Decl., Ex. 3).

**C. Green & Noblin, P.C.**

Green & Noblin, P.C. (“G&N”), along with Renne Sloan Holtzman Sakai LLP (“Renne Sloan”), represents both private plaintiffs in multiple states who purchased Lithium Ion batteries and government agencies that purchased large numbers of the products, such as the San Francisco Community College District, the City of Richmond, and others. G&N has extensive antitrust class action litigation experience and with Renne Sloan provides the Steering Committee with the perspective of public agencies. It is important to include on the Steering Committee a representative of institutional plaintiffs that purchased large numbers of lithium ion batteries and products containing them.

In addition to representing institutional and private plaintiffs in this action, G&N has extensive experience representing plaintiffs in antitrust class action cases. Examples of cases where G&N litigated similar claims that settled for substantial payments on behalf of the plaintiff class include *LCD* (for indirect purchasers); *SRAM* (for direct purchasers), and *DRAM* (for \_ for direct purchasers). Additionally, principals at G&N are significantly involved in representing plaintiffs in MDL antitrust actions in courts across the country involving products that include cathode ray tubes, blood plasma and gypsum. Renne Sloan supports the appointment of G&N based on their extensive experience in this type of case and their work with Renne Sloan representing the public entities. G&N’s firm resume is attached. (Williams Decl., Ex. 4).

**D. Robbins Geller Rudman & Dowd LLP**

Robbins Geller Rudman & Dowd (“Robbins Geller”) has ample resources, a successful track record prosecuting large and complex class actions, and extensive antitrust expertise. With 180 attorneys in nine offices nationwide, including in this District, Robbins Geller is the largest firm in the United States specializing in complex class action litigation. Robbins Geller has the resources and experience to litigate complicated multi-defendant class actions. The firm’s track record of litigating complex cases over the long haul is exemplary. It has litigated hundreds of cases that have endured years of fact and expert discovery, extensive motion practice, and lengthy trials. As but one recent example, Robbins Geller served as co-lead counsel for the past eight

1 years in *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, MDL  
 2 No. 1720 (E.D.N.Y.), an antitrust action against Visa, MasterCard and a dozen of the world's  
 3 largest banks. Following these years of fact and expert discovery (including the production of  
 4 more than 60 million pages of documents and the exchange of 17 expert reports), voluminous  
 5 motion practice, and trial preparation, that case recently settled for \$7.25 billion plus injunctive  
 6 relief. The settlement was preliminarily approved, and if it is finally approved, will be the largest  
 7 ever private antitrust settlement, and the second-largest class action settlement in history,  
 8 providing benefits to more than 12 million merchants nationwide.

9 This track record of success is not new. For example, in *In re Currency Conversion Fee*  
 10 *Antitrust Litig.*, MDL No. 1409 (S.D.N.Y.), Robbins Geller served as co-lead counsel for a class  
 11 of credit card holders in an antitrust action that settled for \$336 million following eight years of  
 12 litigation, resulting in payments to more than 10 million class members. These results would  
 13 clearly only be possible with the kind of professional expertise, legal acumen, and extensive  
 14 resources that this litigation requires.

15 Robbins Geller's senior antitrust partner, **Bonny E. Sweeney**, who will lead the firm's  
 16 team in this case, has been a key player in most of the firm's antitrust cases over the past 17 years,  
 17 and is co-lead counsel in *Payment Card* and *Currency Conversion*. She and her co-counsel were  
 18 praised by the presiding Judge in *Currency Conversion* for providing "extraordinarily high-  
 19 quality representation" and for litigating with "enormous attention to detail and unflagging  
 20 devotion to the cause." *In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 129  
 21 (S.D.N.Y. 2009), *aff'd*, 405 Fed. Appx. 532 (2d Cir. 2010). Ms. Sweeney has served as Chair of  
 22 the Antitrust and Unfair Competition Law Section of the State Bar of California, serves on the  
 23 Advisory Boards of the American Antitrust Institute and the Institute for Consumer Antitrust  
 24 Studies, is a frequent lecturer on antitrust and unfair competition law, and has published  
 25 numerous articles and book and treatise chapters on these topics. In 2007, Ms. Sweeney was  
 26 honored by *Competition Law 360* in its "Outstanding Women in Antitrust" series. Robbins  
 27  
 28



Geller's firm resume and the biographies of all of the Robbins Geller lawyers assigned to this case are attached. (Williams Decl., Exhs. 5-9).

### **E. Scott+Scott LLP**

With offices in California, Connecticut, New York, and Ohio, Scott+Scott has a proven track record of successfully handling large complex class actions, achieving substantial settlements and, when necessary to secure the best relief for its clients, taking cases to trial. In January and February of this year, Scott+Scott served as co-trial counsel in a five week-long antitrust class action trial against American Express, Discover Financial Services, and Citigroup challenging class action barring arbitration clauses in credit card disclosures as a restraint of trade. *Ross v. American Express Co.*, No. 1:04-cv-05723 (S.D.N.Y.). In December 2012, Scott+Scott took the lead role at a two-day summary judgment hearing in *Dahl v. Bain Capital Partners, LLC*, No. 1:07-cv-12388 (D. Mass.), an antitrust class action challenging bid-rigging and market allocation in the multi-billion dollar private equity/leveraged-buyout industry.

Scott+Scott also has significant experience litigation antitrust class actions on behalf of indirect purchasers. Recent leadership examples in indirect purchaser antitrust class actions include: *In re Lipitor Antitrust Litigation*, 3:12-cv-2389-PGS-DEA (D. N.J.) (end payor action) (member of end payor class plaintiffs' Executive Committee); *Mylan Pharmaceuticals, Inc. v. Warner Chilcott Public Limited Company*, 12-cv-3824 (E.D. Pa) (indirect purchaser action) (lead counsel); *In re Skelaxin (Metexalone) Antitrust Litigation*, 1:12-cv-194 (E.D. Tenn.) (endpayor action) (member of steering committee); *In re Nexium (Esomeprazole) Antitrust Litigation*, 1:12-md-2409-WGY (D. Mass) (end-payor action) (member of executive committee); *In re Prograf Antitrust Litigation*, 1:11-cv-2242-RWZ (D. Mass) (indirect purchaser action) (member of the plaintiffs' executive committee); *In re Effexor XR Antitrust Litigation*, 3:11-cv-5661 (D. N.J.) (end-payor action) (member of plaintiffs' executive committee); and *In re Korean Air Lines Co., Ltd. Antitrust Litigation*, 2:07-cv-06542-SJO-AGR (colead counsel for indirect purchaser plaintiffs). Scott+Scott's firm resume is attached. (Williams Decl. Ex. 10).



1 **F. Straus & Boies LLP**

2 Straus & Boies has significant relevant experience in the prosecution of indirect-purchaser  
3 antitrust cases similar to the instant action, including within the Northern District of California.  
4 Currently, the firm serves as co-lead counsel in the DRAM Litigation and holds a significant role  
5 in the CRT Litigation. Straus & Boies has previously participated in other technology cases in  
6 this District, including SRAM and Flash litigation cases. The efficiency and dedication of its  
7 lawyers were recently recognized by Special Master Quinn in the LCD Litigation, who  
8 determined that its work was “of the highest quality.” *See* LCD Litigation, 07-MD-1827 (Dkt No.  
9 7375).

10 In particular, Straus & Boies has considerable experience overseeing complex foreign  
11 discovery efforts. In the LCD Litigation, the Special Master noted that Straus & Boies had “taken  
12 major responsibility throughout the case [and] led and managed the foreign document review  
13 process.” *See* LCD Litigation, 07-MD-1827 (Dkt No. 7375). The Firm is currently engaged in a  
14 similar role on behalf of indirect purchasers in the CRT Litigation. Accordingly, Straus & Boies  
15 has a history of working cooperatively with others and committing the time and resources  
16 necessary to the successful prosecution of major antitrust cases. Straus & Boies’s firm resume is  
17 attached. (Williams Decl., Ex. 11).

18 **G. Susman Godfrey LLP**

19 Susman Godfrey has decades of experience litigating and trying the Nation’s largest civil  
20 antitrust cases. While it is true that most large antitrust cases settle before trial, it is also true that  
21 the proven ability and *willingness* of its counsel to try such cases benefits the class by, among  
22 other things, giving it additional leverage in settlement negotiations. Susman Godfrey has tried  
23 many complex cases, including the leading exemplars of antitrust class actions prosecuted  
24 through a jury trial in the past decade. Beginning with the landmark Corrugated Container price-  
25 fixing case in 1980, in which Susman Godfrey recovered \$500 million on behalf of plaintiffs as a  
26 result of settlements and a verdict after a 3-month jury trial, Susman Godfrey has been in the  
27 forefront of antitrust litigation and trying antitrust cases to successful conclusions for classes.

1 Susman Godfrey tries dozens of cases around the country every single year, and has tried more  
 2 than a dozen major antitrust plaintiffs' cases to juries, resulting in over \$1 billion in verdicts,  
 3 including *In re Vitamin C Antitrust Litigation* (E.D.N.Y., tried 2013), *In re Universal Service*  
 4 *Fund Tel. Billing Practices Litigation* (D. Kan. tried 2008), *Applied Medical Resources Corp. v.*  
 5 *Ethicon, Inc.* (C.D. Cal. tried 2006), and *Masimo Corp. v. Tyco Healthcare Group LP* (C.D. Cal.  
 6 tried 2005)

7 Susman Godfrey's most recent milestone antitrust verdict came just weeks ago, in *In re*  
 8 *Vitamin C Antitrust Litigation*. On March 14, 2013, the firm and its co-counsel won a \$54.1  
 9 million jury verdict on behalf of a direct purchaser class in the Eastern District of New York. The  
 10 case involved price-fixing claims against Chinese vitamin C manufacturers, and was the first-ever  
 11 case in which Chinese companies were found liable for violating U.S. antitrust laws. Judge  
 12 Cogan trebled the jury's \$54.1 million verdict—which represented 100% of the damages sought  
 13 by Susman Godfrey and its co-counsel—to \$162.3 million.

14 In appointing Susman Godfrey co-lead counsel in *In re Crude Oil* last year, Judge Pauley  
 15 praised the firm's long history of serving as "lead counsel in hundreds of class actions, including  
 16 complex antitrust actions." See *In re Crude Oil Commodity Futures Litig.*, No. 11-CV-3600  
 17 (WHP), 2012 WL 569195, at \*2 (S.D.N.Y. Feb. 14, 2012). As reflected by its record in antitrust  
 18 cases, Susman Godfrey is a trial litigation firm with the skills and resources needed to effectively  
 19 and efficiently prosecute this action on behalf of the class. Susman Godfrey currently has ninety-  
 20 five lawyers in its five offices around in the United States, including partners and associates  
 21 located in California. The firm's lawyers are consistently recognized as "Super Lawyers" and  
 22 "Rising Stars" in the states where they practice. Over 90% of Susman Godfrey's lawyers have  
 23 served in highly sought-after federal judicial clerkships after law school. Seven of the firm's  
 24 attorneys have clerked for Justices of the Supreme Court of the United States. Susman Godfrey's  
 25 firm profile and the resumes of all of the Susman Godfrey lawyers assigned to this case are  
 26 attached. (Williams Decl., Exhs. 14-18).

#### IV. CONCLUSION

For the reasons stated herein, on behalf of Indirect Purchaser Plaintiffs, it is respectfully requested that the Court adopt the Proposed Order submitted herewith, appointing the Plaintiffs' Steering Committee.

DATED: May 3, 2013

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